

**BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.**

ATTORNEYS AT LAW

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MARK J. PALCHICK  
JAMES E. MEYERS

March 24, 1993

RECEIVED

MAR 24 1993

OF COUNSEL  
ROBERT BENNETT LUBIC  
FAX: (202) 686-8282

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Re: MM Docket No. 93-44

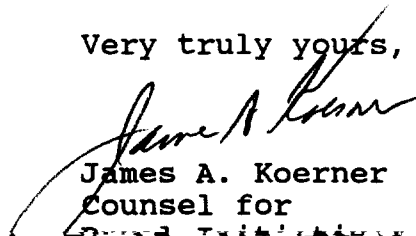
Dear Ms. Searcy:

Transmitted herewith are an original and five copies of a Joint Request for Approval of Settlement Agreement, Dismissal of Application and Grant of Application in the above-referenced proceeding.

Please note that the signature of Sandra M. Avery on the Settlement Agreement and on her Declaration is a facsimile. Original signatures will be furnished immediately upon their receipt by counsel.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner  
Counsel for

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**RECEIVED****MAR 24 1993**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-44
RURAL INITIATIVES FOR SHELTER	)	File No. BPE-870817MC
AND EDUCATION	)	
AMERICAN INDIAN BROADCAST	)	File No. BPE-870820MC
GROUP	)	
For Construction Permit for	)	
New FM Station at Hartford,	)	
Michigan	)	

To: Arthur I. Steinberg  
Administrative Law Judge

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT, DISMISSAL  
OF APPLICATION AND GRANT OF APPLICATION**

Rural Initiatives for Shelter and Education ("Rural") and American Indian Broadcast Group, Inc. ("Group"), (collectively "Petitioners"), by their respective attorneys, pursuant to Section 73.3525 of the Commission's Rules, hereby seek approval of the attached Settlement Agreement pursuant to which the application of Group would be dismissed with prejudice and the application of Rural would be granted. In support thereof, Petitioners state as follows:

Petitioners are the sole applicants for a construction permit to construct and operate a new FM broadcast station on Channel 279A at Hartford, Michigan. They have entered into a Settlement Agreement which, upon approval would eliminate the competition for the channel, thereby conserving Commission resources and clearing the way for the earlier institution of a first FM broadcast service to Hartford, Michigan. Pursuant to the Settlement Agreement, Group

has agreed to dismiss its application in return for monetary consideration. The Settlement Agreement is conditioned upon the following: (a) Commission approval of the Settlement Agreement; (b) dismissal with prejudice of the application of Group; and (c) grant of Rural's application.

Each of the Petitioners has executed a declaration setting forth the reasons why approval of the proposed settlement is in the public interest, and that neither of the Petitioners filed its application for the purpose of seeking or carrying out a settlement. Accordingly, the Petitioners have satisfied the requirements of Section 73.3525 of the Commission's Rules.

Rural will be filing an amendment to its application which will eliminate the need to adduce evidence under issues 1 (RF radiation issue) and 2 (air hazard issue).

In view of the foregoing, Petitioners respectfully request that the Commission approve the attached Settlement Agreement and, upon such approval, dismiss the application of Group with prejudice, and grant the application of Rural.

Respectfully submitted,

**RURAL INITIATIVES FOR SHELTER  
AND EDUCATION**

By: 

James A. Koerner  
Its Attorney

**BARAFF, KOERNER, OLENDER  
& HOCHBERG, P.C.**  
5335 Wisconsin Ave., N.W.  
Washington, D.C. 20015  
(202) 686-3200

**AMERICAN INDIAN BROADCAST GROUP,  
INC.**

By: 

Robert S. Stone  
Its Attorney

**MCCAMPBELL & YOUNG**  
P.O. Box 550  
Knoxville, TN 37901-0550  
(615) 637-1440

**March 24, 1993**

29108.00\Pleading.2

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (this "Agreement") is made as of the 24<sup>th</sup> day of March, 1993, by and between Rural Initiatives for Shelter and Education ("Rural") and American Indian Broadcast Group, Inc. ("Group") (hereinafter collectively the "Parties").

**WITNESSETH:**

WHEREAS, Rural and Group have pending before the Federal Communications Commission (the "FCC") applications (respectively,

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NOW THEREFORE, in consideration of their mutual representations and promises stated herein and intending to be legally bound, the Parties covenant and agree as follows:

1. **FCC Consent.** This Agreement is entered into subject to approval by the FCC or its delegatee, and it shall be void unless the FCC or its delegatee approves it. The Parties shall make good faith efforts to resolve any and all FCC objections in order to obtain prompt approval by the FCC.

2. **Joint Request for Approval of Agreement.** The Parties agree to file with the FCC on or before March 29, 1993, a Joint Request for Approval of this Agreement ("Joint Request"). The Joint Request shall be accompanied by a copy of this Agreement and the supporting documentation required by Section 311(c) of the Communications Act of 1934, as amended, and Section 73.3525 of the Rules of the FCC.

3. **Consideration.** Rural shall pay the sum of Five Thousand Dollars (\$5,000.00) or such lesser amount as the FCC shall approve (the "Settlement Amount") to Group. The Settlement Amount shall be payable as follows: Five Thousand Dollars (\$5,000.00) shall be paid to McCampbell & Young, as counsel for Group by certified or cashier's check within ten (10) days after an order or orders by the FCC granting Rural's application for Construction Permit and authorizing the construction of an FM station on Channel 279A at Hartford, Michigan becomes final as defined below.



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To Rural

Ms. Sandra Avery  
62900 79th Avenue  
Decatur, MI 49045

With a copy to:

James A. Koerner, Esquire  
Baraff, Koerner, Olender  
& Hochberg, P. C.  
5335 Wis. Avenue, N.W., #300  
Washington, D.C. 20015-2003

To Group

Lynwood Eaton  
Burbank Road  
P. O. Box 288  
Sutton, MA 01527

With a copy to:

Robert S. Stone, Esq.  
McC Campbell & Young  
P. O. Box 550  
Knoxville, TN 37901-0550

7. **Remedies Upon Default.** If either Party defaults under this Agreement, the other Party shall have available to it all remedies to which it is entitled, at law or in equity.

8. **Waiver.** Failure of any Party to complain of any act or omission on the part of any other Party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any rights hereunder. No waiver by any party at any time, express or implied, or any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

9. **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the State of Michigan.

10. **Benefit.** This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors, heirs, and permitted assigns.

11. **Entire Agreement.** This Agreement embodies all the terms of the understandings between the Parties and contains all of the



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terms and conditions agreed upon with respect to its subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein. By signing below, the Parties acknowledge that they have read this Agreement and are fully cognizant of these provisions.

12. Counterparts. This undersigned represent and warrant that they are authorized to execute this Agreement. This Agreement may be executed in one or more counterparts, and all so executed shall constitute an Agreement, binding on the Parties, notwithstanding that the Parties are not signatories to the original or the same counterpart.

13. Headings. The headings of the paragraphs of this Agreement are inserted and are for reference purposes only. They in no way define, limit or describe the scope of this Agreement or the intent of any of its provisions.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the year and date first above written.

Witness:

**RURAL INITIATIVES FOR  
SHELTER AND EDUCATION**

By \_\_\_\_\_

Witness:

**AMERICAN INDIAN BROADCAST GROUP, INC.**

By Lynwood H. Eator

terms and conditions agreed upon with respect to its subject

## DECLARATION

I, Sandra Avery, do hereby declare under penalty of perjury as follows:

I am an officer of Rural Initiatives for Shelter and Education ("Rural"), an applicant for a Construction Permit for a new FM broadcast station at Hartford, Michigan.

Rural has entered into a Settlement Agreement with American Indian Broadcast Group, Inc. ("Group"), another applicant for a Construction Permit for a new FM broadcast station at Hartford, Michigan, whereby the Group application will be dismissed in return for monetary consideration to be paid by Rural. Other than the consideration set forth in the Settlement Agreement, neither Rural nor its principals have paid or promised any consideration, directly or indirectly, in connection with the dismissal of the Group application.

Approval of the Settlement Agreement would be in the public interest in that it would eliminate the need to hold an evidentiary hearing, conserving valuable agency and private resources, and would provide for the more expeditious commencement of FM broadcast service at Hartford, Michigan.

In compliance with Section 73.3525 of the FCC Rules, this will state that Rural did not file its application with the intent or for the purpose of effecting a settlement of this case.

Dated this 24<sup>th</sup> day of March, 1993.

*Linda M. Paxson*

LINDA M. PAXSON  
Notary Public Van Buren Cty., MI  
My Comm. Expires Oct. 13, 1996

*Sandra Avery*  
Sandra Avery

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## DECLARATION

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I, Lynwood H. Eaton, do hereby declare under penalty of perjury that the following is true and correct:

1. I am secretary/treasurer of American Indian Broadcast Group, Inc. ("AIBG"), applicant for construction permit for a new FM station on Channel 279A at Hartford, Michigan (BPH-870820MB).

2. No consideration has been or will be given to or received by AIBG from competing applicant Rural Initiatives for Shelter and Education ("Rural") to obtain the dismissal of AIBG's application, as expressly provided for in the settlement agreement between AIBG and Rural dated 3/11/93. The attached itemized accounting of expenses for which AIBG is seeking reimbursement includes only those expenses reasonably incurred by AIBG in preparing, filing, prosecuting, and/or settling AIBG's application.

3. AIBG's application was not filed for the purpose of reaching or carrying out a settlement agreement or any other such agreement with Rural or any other person or entity.

4. The settlement agreement is in the public interest because it resolves the mutual exclusivity between the applications of Rural and AIBG for a new FM station to serve Hartford, Michigan, thereby expediting the initiation of new broadcast service to the community of Hartford, Michigan and surrounding areas.

Executed on: 3/11/93

Lynwood H. Eaton  
Lynwood H. Eaton

## **ITEMIZED ACCOUNTING OF EXPENSES**

Filing Fee	\$1,800.00
Legal Fees	4,236.00
Engineering Fees	2,000.00
Newspaper Publication	35.00
Federal Express/Postage	173.00
Long Distance Telephone Charges	100.00
Photocopies	<u>65.00</u>
<b>Total:</b>	<b>\$8,409.00</b>

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## DECLARATION OF ROBERT S. STONE

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I, Robert S. Stone, do hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney licensed by the State of Tennessee and a shareholder in the law firm of McCampbell & Young, P.C., located in Knoxville, Tennessee. McCampbell & Young, P.C. has acted as communications counsel to American Indian Broadcast Group, Inc., applicant for construction permit for FM Channel 279A allotted to Hartford, Michigan (File No. BPH-870820MB).

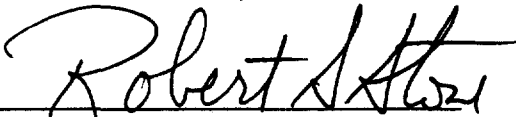
2. After American Indian Broadcast Group, Inc. filed its application with the Commission on August 20, 1987, McCampbell & Young was retained by American Indian Broadcast Group, Inc. to represent it in prosecuting its application. Specifically, McCampbell & Young provided research, consultation and advice to the client in connection with various amendments and other pleadings filed with the Commission to be made a part of the Hartford, Michigan application. Correspondence, amendments, and petitions for leave to amend were filed on ten (10) different occasions with the Commission for American Indian Broadcast Group, Inc. In addition, the undersigned corresponded with officers of American Indian Broadcast Group, Inc. in connection with the basic qualifying and comparative attributes of competing applicant Rural Initiatives for Shelter and Education. Expenses incurred by McCampbell & Young for the benefit of American Indian Broadcast Group, Inc.'s Hartford, Michigan application include long-distance telephone charges, regular postage, and both photocopies and Federal Express charges for each of the ten (10) above-referenced amendments to American Indian Broadcast Group, Inc.'s

application. In addition to the above, McCampbell & Young has most recently negotiated the terms of a Settlement Agreement with counsel for Rural Initiatives for Shelter and Education.

3. All work performed by McCampbell & Young for American Indian Broadcast Group, Inc.'s benefit has been performed on an hourly basis at a rate charged to all other clients of this office, ranging from \$100.00 to \$130.00 per hour. The undersigned hereby certifies that the charges described herein represent fees and expenses legitimately and prudently incurred in the prosecution and settlement of the application of American Indian Broadcast Group, Inc. for Hartford, Michigan FM Channel 279A.

DATED this 23rd day of March, 1993.

MCCAMPBELL & YOUNG, P.C.

By:   
Robert S. Stone

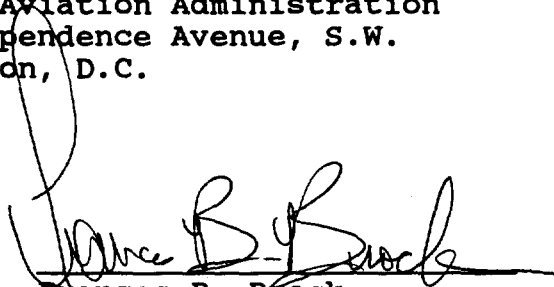
**CERTIFICATE OF SERVICE**

I, Frances B. Brock, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, do hereby certify that on this 24th day of March, 1993, copies of the foregoing document was mailed via United States first class mail to the following:

Arthur I. Steinberg\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 228  
Washington, D.C. 20554

Charles Dziedzic, Esq.\*  
Federal Communications Commission  
Mass Media Bureau  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C.



Frances B. Brock

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\*Via Hand Delivery  
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